



REPUBLIC OF ZAMBIA

REPORT

OF THE

**COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS, NATIONAL
GUIDANCE, GENDER MATTERS AND GOVERNANCE**

ON THE

ACTS OF PARLIAMENT (AMENDMENT) BILL, N.A.B NO. 34 OF 2021

FOR THE

FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

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REPORT OF THE COMMITTEE ON LEGAL AFFAIRS, HUMAN RIGHTS, NATIONAL GUIDANCE, GENDER MATTERS AND GOVERNANCE ON THE ACTS OF PARLIAMENT (AMENDMENT) BILL, N.A.B. NO. 34 OF 2021 FOR THE FIFTH SESSION OF THE TWELFTH NATIONAL ASSEMBLY

1.0 MEMBERSHIP OF THE COMMITTEE

The Committee consisted of Mr M Jere, MP (Chairperson); Mrs P G M Jere, MP (Vice Chairperson); Mr C Nanjuwa, MP; Evg. H Shabula, MP; Mr E Singombe, MP; Mr R Bulaya, MP; Ms M P Langa, MP; Mr S Banda, MP; Mr S Chungu, MP; and Mr F M Fube, MP.

The Honourable Mr Speaker
National Assembly
Parliament Buildings
LUSAKA

Sir,

The Committee has the honour to present its Report on the Acts of Parliament (Amendment) Bill, N.A.B No. 34 of 2021 for the Fifth Session of the Twelfth National Assembly referred to it by the House on 16th April, 2021.

2.0 FUNCTIONS OF THE COMMITTEE

The functions of the Committee are set out in Standing Order 157(2) of the National Assembly Standing Orders, 2016, pursuant to which the Committee is mandated to consider Bills that may be referred to it.

3.0 MEETINGS OF THE COMMITTEE

The Committee held seven meetings to consider the Acts of Parliament (Amendment) Bill, N.A.B No. 34 of 2021.

4.0 PROCEDURE ADOPTED BY THE COMMITTEE

In order to acquaint itself with the ramifications of the Bill, the Committee sought both written and oral submissions from the stakeholders listed at Appendix II.

5.0 OBJECT OF THE BILL

The object of the Bill was to amend the *Acts of Parliament Act, Chapter 3 of the Laws of Zambia*, so as to provide for ó

- a) the publication of Acts in electronic form;
- b) the verification of electronic copies of Acts;
- c) the powers of the Commissioner of Law Revision in relation to publication of electronic Acts; and
- d) matters connected with, or incidental to, the foregoing.

6.0 BACKGROUND

Globally, information and communication technology (ICT) had been identified as an efficient, appropriate, and transparent as well as inclusive vehicle of public service delivery. To this effect,

the Government of the Republic of Zambia was implementing e-Government in all aspects of public service delivery public through the launch of the SMART Zambia Agenda and operationalisation of a specialised Electronic Government Division to spearhead the implementation and transition of the country into a digital economy.

Thus, the introduction of the Acts of Parliament (Amendment) Bill, 2021 (hereinafter referred to as the Bill), sought to amend the *Acts of Parliament Act, Chapter 3 of the Laws of Zambia* (hereinafter referred to as the principal Act) so as to provide for, *inter alia*, the publication of Acts in electronic form and the verification of electronic copies of Acts.

7.0 SALIENT PROVISIONS OF THE BILL

The salient features of the Bill were as set out below.

7.1 Clause 1 – Short title

Clause 1 provided for the short title of the Act, and that it was to be read as one with the principal Act. The Act shall come into operation on the date appointed by the Minister by Statutory Instrument (SI).

7.2 Clause 2 – Insertion of section 1A

Clause 2 provided for the insertion of the definitions of the term "Commissioner" and the phrase "Laws of Zambia" as they had been used in the Bill.

7.3 Clause 3 – Amendment of section 9

Clause 3 sought to amend section 9 of the principal Act, which provided for the publication of the Acts of Parliament, by the insertion of figure A (1) after A9; and a new subsection immediately after subsection (1), thereby providing for the electronic publication of Acts.

7.4 Clause 4 – Repeal and replacement of section 10

Clause 4, erroneously numbered as 'clause 3', on page 4 of the Bill, sought to repeal and replace section 10 of the principal Act, which provided for the commencement of the Acts of Parliament. The new section 10 provided for the establishment and maintenance of an electronic database of the Laws of Zambia.

7.5 Clause 5 – Insertion of sections 11, 12, 13, 14, 15 and 16

Clause 5, erroneously numbered as 'clause 4', on page 4 of the Bill, provided for the insertion of new sections 11, 12, 13, 14, 15 and 16. Section 11 provided for the status of verified copies of database instruments last updated date while section 12 provided for the powers of the Commissioner in relation to the *Laws of Zambia (Revised Edition) Act, No. 9 of 1968*.

Section 13 provided for the editorial amendments not to change legal effects of Acts while sections 14, 15 and 16 provided for the Commissioner to compile a record of editorial amendments; editorial amendments without effect if not contained in the record; and commencement, respectively.

8.0 STAKEHOLDERS' SUBMISSIONS AND CONCERNS

Stakeholders raised the concerns set out hereunder.

8.1 General Concerns

Clause 4 which sought to repeal and replace section 10 of the principal Act on page 4 of the Bill was erroneously numbered as 'clause 3' instead of 'clause 4.' The subsequent sections should, consequently, be re-numbered accordingly.

The words 'specified in the copy' under section 11(2) in the clause erroneously numbered as clause 4 should be moved so as to be aligned to the phrase 'electronic Act, as at the date'.

8.2 Clause 1 – Short title

Stakeholders were concerned that clause 1 did not provide for a commencement date for the proposed piece of legislation. Stakeholders were of the view that the provision for the Minister to appoint a date was subjective as it was left to his discretion. Stakeholders submitted that it would be prudent to specify the date on which the law should come into effect.

8.3 Clause 3 – Amendment of section 9

Stakeholders welcomed clause 3 which sought to amend section 9 of the principal Act, so as to provide for the publication of the Acts of Parliament in electronic format. Stakeholders submitted that by providing an electronic platform for the publication of the Acts of Parliament, the law would be accessible by anyone who had access to the internet.

Other stakeholders submitted that the establishment of an electronic database would assist the legal fraternity and the general public with a trusted, convenient, safe and secure place to access the Laws of Zambia. They submitted that the hard copies of the Green Volumes of the Laws of Zambia, whose cost of production was astronomical, were outdated, having last been updated in 1996. The publication of the Acts through a dedicated electronic database, therefore, would provide the Judiciary, the legal fraternity and the general public with a reliable source of updated laws.

Some stakeholders, however, indicated that there was need to clearly define the term 'Electronic Format' in subsection 2 for the layperson. Further, the stakeholders informed the Committee that there was need to put in place access control and system monitoring to avert hacking. In that regard, it was necessary to have an un-hackable network to protect the laws and the country's sovereignty.

Other stakeholders submitted that while the amendment was welcome, there was need to bring to the fore section 13(2) of the *Electronic Communications and Transactions Act, No. 4 of 2021*, which provided that an expression in a law, whether used as a noun or verb, including the words 'document', 'record', 'file', 'submit', 'lodge', 'deliver', 'issue', 'publish', 'write in', 'print' or words or expressions of similar effect, shall be interpreted to include or permit that form, format or action in relation to a data message unless otherwise provided for in this Act. Therefore, there was nothing to stop the Government Printer from publishing the Acts of Parliament electronically under section 9 of the principal Act, considering that the interpretation of the word 'publish' extended to a data message. In that regard, the new insertion should use the word 'shall' and not 'may'.

8.4 Clause 4 – Repeal and replacement of section 10

In welcoming the repeal and replacement of section 10 of the principal Act so as to provide for the establishment and maintenance of an electronic database, some stakeholders informed the Committee that there was need to clearly define “database” for the layperson.

8.4 Clause 5 – Insertion of sections 11, 12, 13, 14, 15 and 16

Some stakeholders were concerned about what constituted an official verification mark in section 11. The stakeholders wondered whether or not the verification mark would be verifiable by human means or logically be recognised by digital means, or both. It was recommended that the official verification mark should bear both manual and digital official verification marks.

In welcoming the insertion of section 12, which provided for the powers of the Commissioner, some stakeholders indicated that they hoped that the Commissioner would not abrogate the legislative authority bestowed on Parliament by Article 62(2) of the Constitution of Zambia, as amended by Act No. 2 of 2016. The stakeholders informed the Committee that the Commissioner should have a standard procedure for editing the electronic version of the Acts of Parliament to avoid the risk of changing the substance of the law. For instance, a draft could be created to prescribe the standard editorial amendment process. Further, the stakeholders submitted that there should be a process that ensured checks and balances for electronic documents by keeping a physical version of the document as final draft so that it could be referred to in a case where a mistake was made.

One section of stakeholders was of the view that section 14 which sought to provide powers for the Commissioner to compile a record of editorial amendments, may fall foul of section 9 of the *Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia* which provided that every schedule to or table in any written law, together with notes thereto, shall be construed and have effect as part of such law. The stakeholders, therefore, recommended that a clear dichotomy between the two provisions be drawn to prevent legislative arbitrage.

With regard to the amendment in section 16(2), which provided that every Act of Parliament shall be deemed to come into force immediately on the expiration of the day next preceding its commencement, some stakeholders submitted that the language could be made simpler and plainer to avert vagueness. As an example, the stakeholders submitted that the section could simply read “Every Act shall be deemed to come into force on the day as provided in the commencement order.”

Other stakeholders informed the Committee that the proposed section 16(4), which provided that where an Act was made with retrospective effect, the commencement date of the Act shall be the date from which it was given or deemed to have been given. That effect was too broad and not in line with established case law that had drawn a distinction between procedural and substantive retrospective application of the law, and cited the case of *Goodson Kapaku and others vs Mwinilunga District Council and the Minister of Finance (As a Corporation Sole & Third Party)* (2006) Z.R 158.

9.0 COMMITTEE'S OBSERVATIONS AND RECOMMENDATIONS

The Committee notes that all the witnesses who appeared before it were in support of the Bill. The Committee also supports the Bill, and in so doing, makes the observations and recommendations set out below.

- (i) In welcoming clause 3, which seeks to amend section 9 of the principal Act so as to provide for the publication of the Acts of Parliament in electronic format, the Committee notes that the amendment will provide the Judiciary, the legal fraternity and the general public with a reliable source of updated laws. The Committee, however, observes that without access control and system monitoring, the database could fall prey to hacking. The Committee, therefore, recommends that an indestructible network to protect the laws be put in place to guard against a broad range of hacks that have the potential to compromise this critical database and throw the country into turmoil.
- (ii) The Committee notes that the proposed amendment in section 3(2) provides that an Act may be published in an electronic format. Meanwhile, section 9 in the principal Act provides that every Act shall be published by the Government Printer as soon as it is assented to. The Committee is of the view that the principal Act should be cross-referenced with the *Electronic Communications and Transactions Act, No. 4 of 2021* to ensure that the Government Printer does not electronically publish the Acts, considering that the interpretation of the word "publish" extends to a data message. The Committee, therefore, recommends that apart from clearly defining the term "electronic format," the proposed amendment in section 3(2) should read "An Act shall be published in an electronic format."
- (iii) The Committee is concerned with the proposed amendment in section 11 with regard to what constitutes an official verification mark as the amendment does not make it clear whether the official verification mark will be verifiable by human or digital means, or both. In that regard, the Committee recommends that the official verification mark for the electronically published Acts be verifiable both manually and digitally.
- (iv) In welcoming the insertion of section 12, which provides for the powers of the Commissioner, the Committee is of the view that a standard procedure for editing the electronic version of the Acts of Parliament be drafted to avoid the risk of the Commissioner changing the content of the law, and so usurping the legislative authority bestowed on Parliament. The Committee, therefore, recommends the development of a control system to ensure checks and balances for electronic versions of the Acts vis-à-vis physical versions for reference in case of errors.
- (v) The Committee is also concerned that the compilation record of editorial amendments proposed in section 14 of the Bill may fall foul of section 9 of the *Interpretation and General Provisions Act, Chapter 2 of the Laws of Zambia*. The said section provides that every schedule to or table in any written law, together with notes thereto, shall be construed and have effect as part of such law. Thus, the Committee recommends that a clear division between the two provisions be drawn to prevent legislative arbitrage.

10.0 CONCLUSION

The Committee is of the view that the Acts of Parliament (Amendment) Bill is a progressive piece of legislation. The Committee observes that the publication of Acts of Parliament in electronic format will promote inclusiveness, accountability and transparency, and wide access to the laws by the general public.

The Committee wishes to express its gratitude to all stakeholders who appeared virtually before it to render both oral and written submissions. The Committee also wishes to thank you, Mr Speaker, for your guidance throughout its deliberations, and the Clerk and her staff for the services rendered to it.

We have the honour to be, Sir, the Committee on Legal Affairs, Human Rights, National Guidance, Gender Matters and Governance mandated to consider the Acts of Parliament (Amendment) Bill, N.A.B No. 34 of 2021, for the Fifth Session of the Twelfth National Assembly.

Mr M Jere, MP
(Chairperson)

Mrs P G M Jere, MP
(Vice Chairperson)

Mr C Nanjuwa, MP
(Member)

Evg. H Shabula, MP
(Member)

Mr E Singøombe, MP
(Member)

Mr R Bulaya, MP
(Member)

Mr S Banda, MP
(Member)

Ms M P Langa, MP
(Member)

Mr S Chungu
(Member)

Mr F M Fube
(Member)

May, 2021
LUSAKA

APPENDIX I - NATIONAL ASSEMBLY OFFICIALS

Ms C Musonda, Principal Clerk of Committees

Mr F Nabulyato, Deputy Principal Clerk of Committees (SC)

Mrs C K Mumba, Senior Committee Clerk (FC)

Ms B P Zulu, Committee Clerk

Ms I Mwiya, Typist

Mr D Lupiya, Committee Assistant

APPENDIX II–LIST OF WITNESSES

MINISTRY OF JUSTICE

Mr A Nkunika ó Permanent Secretary (Legislative Drafting)

Mr L Banda ó Parliamentary Counsel

INFORMATION AND COMMUNICATIONS TECHNOLOGY ASSOCIATION OF ZAMBIA

Ms S Mvula ó Registrar

Mr C Sinyangwe ó Chairperson of Membership

MAGISTRATES’ AND JUDGES’ ASSOCIATION OF ZAMBIA

Mr N Simaubi ó National Secretary/Assistant Senior Research Advocate in the Court of Appeal

NATIONAL ARCHIVES OF ZAMBIA

Ms C L Msuma ó Director

Mr S Banda ó Chief Archivist, Records Management

Mr E Sianjani ó Chief Archivist

ZAMBIA INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY

Mr T K Malama ó Director, Legal and Regulatory Affairs and Acting Director General

SMART ZAMBIA INSTITUTE

Mr M Makuni ó Director, e-Government division

Mr C Makala ó Assistant Director, Policy

LAW ASSOCIATION OF ZAMBIA

Mr W Luwabelwa ó Member